IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

REVIEW PETITION NO.1 OF 2006

IN

ORDER DATED 29TH OCTOBER 2005 ON THE OFFICIAL LIQUIDATOR'S REPORT DATED 20TH OCTOBER 2005

Mrs.Rajashree P.Asubhe ...Petitioner

V/s.

Official Liquidator ...Respondent

And

Vijay Pandurang Javdekar & Ors. ...Applicants

.....

Ms.Manisha Virkhare i/b Mr.Bhavesh Parmar for Petitioner.

Mr.Ushajee Peri i/b Mihir Desai for Applicants on notice.

Mr.S.C.Gupta, Official Liquidator is present.

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CORAM: A.M.KHANWILKAR, J.

JUNE 26, 2006.

P.C.

1. Heard Counsel for the parties.

2. The Petitioner claims to have filed this Review Petition for self and in representative capacity for and on behalf of 45 other employees, questioning the correctness of the order passed by me on October 29, 2005 below the Official Liquidator's report dated October 20, 2005. By the said order, direction was sought by the Official Liquidator in terms of prayers (a) to (c) made therein. I, however, approved the Official Liquidator's report in terms of clause (c) thereof on certain conditions. In the first place, I have found that the basis on which relief (ex-gratia payment) has been given to the company paid staff in the past, was on wrong assumption. For the first time, the Official Liquidator's report placed before me revealed the correct position of the facilities availed by the company paid staff on par with the regular staff such as LTC and gratuity. The report also mentioned that although medical allowance facility is not available to company paid staff, in special cases, even that relief has been extended in the past. The report thus noted that the company paid staff is not eligible only for

pension scheme which is the additional facility available to regular staff.

3. In other words, in the past, ex-gratia relief was given to the company paid staff on the erroneous assumption that they were not receiving facilities such as medical allowance, LTC, pension, gratuity, which facilities were availed by regular staff. Since that basis was incorrect, naturally, the question of extending benefit which was granted to the company paid staff in the past on such erroneous assumption did not arise. Accordingly, I was disposed to direct commensurate deductions. In my order under review, however, I decided to continue the payment of ex-gratia amount as in the past, on conditions specified in the order that the employees will have to subscribe to Group Super-annuation Scheme of LIC which will cover for pension facility. With a view to provide benefit analogous to medical allowances, the company paid staff were required to subscribe to Group Insurance Scheme, which would provide general insurance cover to each of the employee up to Rs.2,00,000/- (Rupees Two Lakhs) with accident benefit. That order was

invited by the representatives of the company paid staff who were in deliberation with me, and had assured that the overwhelming number of employees were willing to subscribe to those schemes.

4. Accordingly, the conditions specified in my order dated October 29, 2005 while giving relief in terms of clause (c) of the report was on the basis of assurance/consent given by the representatives of the employees before me. I was given to understand that the stated representatives had authority to make such statement on behalf of concerned employees including the Petitioner herein.

5. However, in the present Review Petition, specific case is made out that the assurance given by the so-called representatives of the employees was without authority. It is stated that no such understanding was reached between the employees. In other words, Authority of the concerned representatives who had appeared before me and consented for incorporation of condition for extending relief in terms of clause (c) of the

Official Liquidator's report came to be passed, is now questioned by the Petitioner and 45 other signatories to the Petition.

6. Having regard to the case made out in the Petition, I thought it necessary to issue notice to the employees who had appeared before me posing to be representatives of the company paid staff employees, namely, Vijay P.Javadekar, Mr.Mangesh Bharat Thakore and Mrs.Vaishali Vijay Jog to evoke their response. Those persons have filed reply affidavits in the present Petition. It is asserted by them that the statement made before me by them, on which basis order under review came to be passed, was with clear knowledge and approval of the Petitioner and other employees. The circumstances in which they made such statement before me on the basis of which the order under review came to be passed have been set out in the reply affidavit filed by Mr.Javadekar. In Para 10 of his affidavit, it is clearly mentioned that when the representatives were deliberating with me in chamber, other employees were standing outside my

chamber and were duly kept informed about the deliberations which took place in my chamber. It is stated that only after all concerned had agreed in principle, giving assurance as recorded in my order, the representatives made such statement before me. The names of the concerned employees have been mentioned in the reply affidavit. It is also stated that the suggestion as recorded in the order under review was given to the Court only after consulting all the employees.

7. The Official Liquidator has also filed reply affidavit to this Petition. The Official Liquidator asserts that the order has been passed on the basis of the statement made by the representatives who posed themselves to be the authorised representatives of the employees of the company paid staff.

8. After examining the rival pleadings and the stand taken before me on affidavits, I have no hesitation in accepting the version of Mr.Vijay Javadekar and other two employees who had appeared before me, claiming to be the representatives of

the company paid staff. Before passing the order under review, deliberations took place on more than one date. As the version of Mr.Javadekar is accepted, it necessarily follows that the Petitioner has approached this Court with false and incorrect stand on affidavit that the Petitioner and other employees were not consulted and the order under review was invited, keeping them in dark. On this count alone, the Petition deserves to be thrown out at the threshold. I also find substance in the argument of the added Respondent Mr.Vijay Javadekar and others that the order under review as has been passed, is binding on all company paid staff. Moreover, the order as has been passed is in no way prejudicial to the employees. Inasmuch as, the company paid staff would still receive amount which will be far in excess of the ex-gratia amount receivable by the regular staff i.e. Rs.2,467/- (Rupees Two Thousand Four Hundred Sixty-seven) inspite of deductions towards subscriptions to be made as per the order under review. In that, the company paid staff will get ex-gratia amount in cash in excess of Rs.2,467/- (Rupees Two Thousand Four Hundred

Sixty-seven) and in addition, will be covered by Group Super-annuation Scheme of LIC which makes provision for pension and also Group Insurance Scheme which will provide benefit analogous to medical allowance by providing risk cover to each of the employee to the extent of Rs.2,00,000/- (Rupees Two Lakhs) with accident benefits.

9. Be that as it may, in the matter of grant of ex-gratia payment, the employees cannot ask for such benefit as of right. The ex-gratia payment which is offered to the company paid staff, necessarily, will have to be commensurate with the ex-gratia amount receivable by regular staff on the basis of basic + DP + DA + HRA + CCA + Transport allowance, which works out to around Rs.2,467/- (Rupees Two Thousand Four Hundred Sixty-seven) only. At best the company paid staff will be entitled to be suitably compensated for the additional facility available to regular paid staff such as pension and medical allowances only. This Court cannot be party to distribution of largesse from the funds of the Official Liquidator. This position can be better understood by referring to

specific cases. It is seen that if the company paid staff is granted relief as in the past, in terms of prayer (c) of the Official Liquidator's report, the effect as is noted in the chart provided will indicate that they would receive payment far in excess of regular staff. For example, the senior most clerk Smt.Vaishali Jog would receive Rs.21,994/- (Rupees Twenty-one Thousand Nine Hundred Ninety-four). Whereas, if prayer (b) of the report was to be accepted, the same employee would receive an amount of Rs.16,621/- (Rupees Sixteen Thousand Six Hundred Twenty-one). In either case, the difference of amount receivable is far in excess of Rs.2,467/- (Rupees Two Thousand Four Hundred Sixty-seven) receivable by regular staff.

10. Suffice it to observe that the order under review passed by me was essentially invited by the overwhelming number of company paid staff on the basis of assurance/consent given by their representatives. If they had not consented for that arrangement, then, I would have granted lesser ex-gratia amount to the company paid staff, as out

of the four facilities, they were already receiving two facilities on par with regular staff such as LTC and gratuity. In the past, however, this Court granted higher benefit to the company paid staff on erroneous assumption that even those facilities were not available to the company paid staff. In other words, instead of granting direction in terms of clause (c) of the report, I may have considered granting direction in terms of clause (a) or (b) of the report. The said clauses read thus :

> "(a) Whether the Official Liquidator may be permitted to disburse the payment of ex-gratia/bonus to the Company Paid Staff of this office for the year 2004-05 at par with the Central Govt. employees.
>
> (b) If directions to prayer (a) above is in the negative, whether the Official Liquidator may be permitted to disburse the payment of ex-gratia/bonus to the Company Paid Staff @ 15% of the Pay, D.P. & DA."

11. As mentioned earlier, the arrangement specified in the order under review of deduction on account of subscription towards Group Super-annuation Scheme of LIC and Group Insurance Scheme was on the basis of arrangement agreed upon

by the overwhelming number of company paid staff at the relevant time. What is relevant to note is that inspite of the deductions to be made towards such subscription, from the chart produced by the Official Liquidator, which was made available to the Counsel for the Petitioner, it is seen that the company paid staff will still receive in hand ex-gratia amount higher than the regular staff. The regular staff would get ex-gratia amount to the extent of Rs.2,467/- (Rupees Two Thousand Four Hundred Sixty-seven) maximum. But some of the company paid staff will receive far excess amount in addition, would be covered by the two schemes.

12. Viewed thus, no prejudice is caused to the company paid staff. On the other hand, their interest is more than safeguarded and they would get higher benefit than the regular staff. Taking any view of the matter, this is not a case for review.

13. To get over this position, Counsel for the Petitioner would contend that instead of requiring the company paid staff to subscribe to Group

Super-annuation Scheme of LIC and Group Insurance Scheme, the amount which will be deducted towards their contribution for the respective Schemes, be deposited in their respective Provident Fund Account. In the communication addressed to Advocate Shri Bhavesh Parmar dated 19th June 2006 under the signature of Petitioner and other about 41 staff, out of 57 company paid staff, authority has been given to make statement in the above terms. It is not possible to countenance this suggestion. On the earlier occasion, as noted in my order under review, the overwhelming majority consented to the arrangement directed in the said order. What is overlooked is that the arrangement as specified in the order under review is not one of reducing the quantum of ex-gratia amount payable to the company paid staff, but is one of interposing the relief of payment of ex-gratia amount as receivable by Central Government employees and to cover the company paid staff for facilities which are not provided to them on par with regular staff such as pension and medical allowances. Moreover, the subscription to be paid by the respective employees covered by two group

schemes is relatively low. For, if the individual employee were to subscribe to separate insurance package, they would be required to pay much higher subscription.

14. Suffice it to observe that the arrangement which is now suggested across the bar of depositing the deductible amount towards subscription of the two Group Schemes in the Provident Fund Account of individual employee cannot be accepted as that was not the intention for passing the order under

review. In law, that cannot be the ground to review the order already passed.

15. Taking overall view of the matter, this is not a fit case to review the order in question. Hence, rejected.

16. While parting, I may mention that to observe sobriety, I am not precipitating the matter against the Petitioner for having filed false and incorrect affidavit before this Court-that she was not party to the assurance/consent given by the

representatives, who had appeared before me on the earlier occasion.

A.M.KHANWILKAR, J.